CR 15 PAGE NO. 1

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Single Bench

C.R.NO. 167 /2004

APPLICANT
DEFENDANT

Sateesh Kumar aged about 35 yrs son of Kishan Singh, caste-Rajput, Railway Employee, Gangman, r/o Near Railway Colony Instt. Dongargarh, Tah Dongargarh, Distt. Rajnandgaon (Chhattisgarh)

P.R. No. 3331/04
Presented by Shri Arun Rao
dated 11/1/05

VERSUS

NON-APPLICANT
PLAINTIFF

Gurvir Singh Bagga, son of Shri Prakash Singh Bagga, aged about 35 years, MANIHARI STORES, resident of Budhwaripara, Dongargarh, Tah Dongargarh, Distt. Rajnandgaon (CG)

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE, 1908

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. No. 167/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

17.12.2004

Shri R.N. Jha, counsel for the applicant.

Heard on the question of admission.

The applicant has preferred this revision petition under Section 115 of Code of Civil Procedure, 1908 being aggrieved by the order dated 22.9.2004 passed by learned Civil Judge Class-I, Dongergarh, whereby learned Civil Judge rejected the application of the applicant herein filed under Order 7 Rule 11 of CPC for rejection of the suit filed by the non-applicant herein on the ground that the plaint did not disclose the cause of action, as the name of the non-applicant is not written in the three promissory notes based on which the suit is filed.

Having heard learned counsel for the applicant, I have perused the copy of the application produced by learned counsel for the applicant during the course of argument and also perused the copy of the plaint.

The non-applicant/plaintiff filed a suit against the applicant/defendant for recovery of loan amount of Rs.49,500/- advanced by him to the applicant in three stages as mentioned in Paras 3, 4 & 5 of the plaint. In Para-3 of plaint, it has been mentioned that on 15.1.2001 the applicant herein approached the respondent herein for advancement of loan, which was required by him for the purpose of treatment of his wife, therefore, a loan of Rs.12,500/- was advanced to the applicant herein and after taking loan the applicant herein executed a pro-note and receipt in favour of

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R.167/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

non-applicant herein and appended his signatures. Similarly, on 20.2.2002 the applicant again approached the respondent for advancement of loan for the same purpose and at that time also after taking loan of Rs.18,000/- the applicant has executed a pro-note and receipt on the same day. Thereafter, again on 10.04.2004 the applicant took the loan of Rs.19,000/- for the same purpose from the respondent herein and in lieu thereof executed a pro-note and receipt. In paragraph-6 of the plaint, it has been mentioned that on demand made by respondent and after giving assurance when applicant failed to repay the loan amount then the respondent served a notice on the petitioner on 17.10.2002. In Paragraph-8 of the plaint it has been written that instead of repaying the loan amount the applicant herein has sent the wrong reply of notice dated 17.10.2002 through his counsel, therefore, cause of action arose to respondent on 23.11.2002 for filing the suit on account of sending a wrong reply of the notice. Therefore, the suit of the respondent is based on the advancement of loan on three dates, also on the promissory notes and receipts signed in token of taking loan.

Learned counsel for the applicant argued that since the name of the respondent is not mentioned in all the three promissory notes, therefore, learned trial court ought to have rejected the plaint under Order 7 Rule 11 of CPC.

I do not find any substance in the argument of learned counsel for the applicant since it is a matter of evidence that as to whether the applicant herein executed the three pro-notes after taking loan

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR. 167/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	from the respondent herein, as mentioned in Paragraphs 3 to 5 of the plaint. Merely, because the name of respondent is not mentioned in all three promissory notes, at this stage, the plaint cannot be rejected under Order 7 Rule 11 of CPC on the ground that no cause of action is available to the respondent. The trial court has rightly rejected the application of the applicant herein by the impugned order mentioning therein that the point raised by the defendant can be decided only after recording of the evidence. In view of foregoing reasons, I am of the opinion that learned counsel for the applicant has failed to point out any illegality or material irregularity in the impugned order. Therefore, this revision deserves to be dismissed and accordingly, it is dismissed at the admission stage itself. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan

23/12